FRANK F. SALSEDO

IBLA 86-639 Decided October 2, 1987

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting Indian allotment application CA-17900.

Affirmed.

1. Indians: Lands: Allotments on Public Domain: Lands Subject to -- Segregation

BLM properly rejects an application for an Indian allotment filed pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1982), where, at the time the application was filed, the land was segregated, in accordance with 43 CFR 2711.1-2(d), from appropriation under the public land laws by publication in the Federal Register of notice of realty action offering the land for sale.

APPEARANCES: Frank F. Salsedo, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Frank F. Salsedo has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated February 25, 1986, rejecting his Indian allotment application, CA-17900.

On October 15, 1985, appellant filed an application for an allotment of 40 acres of land described as the NW 1/4 NW 1/4 sec. 14, T. 8 S., R. 2 E., San Bernardino Meridian, Riverside County, California, pursuant to section 4 of the Act of February 8, 1887, as amended, 25 U.S.C. § 334 (1982). In his application, appellant stated that he did not claim a "valid bona fide settlement." Rather, the application was accompanied by a petition for classification of the land as suitable for settlement under section 4 of the Act of February 8, 1887. Until such classification was effected, the land was not subject to settlement. 43 CFR 2530.0-3(c). In its February 1986 decision, BLM rejected appellant's application because, at the time the application was

filed, the land had been, in accordance with 43 CFR 2711.1-2(d), "segregated from appropriation under the public land laws" by virtue of publication in the Federal Register of a notice of a proposed sale of the land. Appellant timely appealed from that decision.

In his statement of reasons for appeal, appellant contends that he was led to believe by BLM that his allotment application complied with section 4 of the Act of February 8, 1887. He asserts that the land is needed to establish a residence for his family and a business, which will employ Native Americans, and that he has spent a lot of time and money to achieve his goals.

The record establishes that on June 5, 1985, BLM published a "Notice of Realty Action" in the Federal Register (50 FR 23770), which notified the public that various parcels of land, including the land involved herein, had been found suitable for sale and would be offered for competitive sale on August 14, 1985, pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1713 (1982). 1/ The Federal Register notice further stated that:

> Upon publication of this notice of realty action in the Federal Register as provided in 43 CFR 2711.1-2(d), the sale parcels will be segregated from appropriation under the public land laws, including the mining laws. The segregative effect of this notice shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the Federal Register of a termination of segregation or 270 days from the date of publication of this announcement, whichever occurs first.

50 FR 23772 (June 5, 1985).

[1] Section 4 of the Act of February 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians, in certain instances, where the Indians have made settlements upon public lands "not otherwise appropriated." 25 U.S.C. § 334 (1982). It is well established that where, at the time an application for an Indian allotment is filed, the land is not available for settlement and disposition under section 4 of the Act of February 8, 1887, by virtue of segregation of the land from appropriation under that

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1/ The land in question herein was to be split into two sale parcels (R-28 and R-29) involving the north and south halves of the 40-acre parcel, each valued at $ 42,000. The Federal Register notice stated that any parcels unsold as a result of the Aug. 14, 1985, sale would then be offered over-the-counter "on a competitive basis" on Aug. 28, Sept. 11, and Sept. 25, 1985, whereupon any remaining parcels would be "available for recreation and public purposes leases/patents, Bureau-benefiting land exchanges and continuing land sales on a first come, first serve basis." 50 FR 23773 (June 5, 1985).

statute, the application is properly rejected. E.g., Ella Mae Jones, 76 IBLA 205 (1983) (land designated by statute for disposal); Dorothy L. Standridge, 55 IBLA 131 (1981) (notice of multiple use classification). That is the situation in this case.

At the time appellant filed his Indian allotment application on October 15, 1985, the land was segregated from appropriation under the public land laws, including section 4 of the Act of February 8, 1887, in accordance with 43 CFR 2711.1-2(d). That regulation provides, as set forth in the Federal Register notice, that publication in the Federal Register of a notice of realty action offering public lands for sale pursuant to section 203 of FLPMA "shall segregate the public lands covered by the notice of realty action to the extent that they will not be subject to appropriation under the public land laws." 43 CFR 2711.1-2(d). The notice of realty action was published in the Federal Register on June 5, 1985. Publication of that notice segregated the described land from appropriation under the public land laws. Accordingly, the land involved cannot be regarded as "not otherwise appropriated" on October 15, 1985, the date appellant filed his application. 25 U.S.C. § 334 (1982). Thus, BLM properly rejected appellant's Indian allotment application. 2/ In fact, 43 CFR 2711.1-2(d) provides that BLM cannot consider an application filed subsequent to publication of such a Federal Register notice and that "[a]ny subsequent application, shall not be accepted, shall not be considered as filed and shall be returned to the applicant, if the notice segregates the lands from the use applied for in the application."

Appellant's principal argument is that BLM led him to believe, presumably at the time he filed his application, that he had complied with section 4 of the Act of February 8, 1887. Appellant has submitted no proof in support of that statement. Even if there were such proof, this would not avail appellant where he must be deemed to have known at the time he filed his application, by virtue of the Federal Register notice and 43 CFR 2711.1-2(d), that the land had been segregated from appropriation under the public land laws and was, thus, not available for settlement and disposition under section 4 of the Act of February 8, 1887. See 44 U.S.C. § 1507 (1982); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald B. Peterson, 97 IBLA 314, 319 (1987).

Finally, even though we do not doubt that acquisition of the land in question plays an important part in appellant's future plans, that land was not available under section 4 of the Act of February 8, 1887, at the time appellant filed his application.

2/ We note that there is no evidence that appellant established, or that he could have established, any valid rights in the land prior to publication of the Federal Register notice of realty action, which rights could then have survived the segregative effect of that publication. See, e.g., Henrietta Roberts Vaden v. BLM, 96 IBLA 198 (1987); Dorothy L. Standridge, supra at 134. Appellant admitted in his application to the absence of any settlement of the land.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Kathryn A. Lynn
Administrative Judge
Alternate Member